

Office of Chief Counsel
Internal Revenue Service

memorandum

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JAFields

date: **MAY 06 2002**

to: ALAN POBRE, Technical Advisory

from: DEBRA K. MOE
Associate Area Counsel (Small Business/Self-Employed)
JULIE A. FIELDS, Attorney

subject: **Advisory Opinion - 20 Year Limitation on Recorded Judgments**

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse affect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

This memorandum responds to your request for advice as to whether a judgment lien recorded in California is valid for 20 years (as indicated on the face of the abstract of judgment) or for 10 years (as established by the California statute of limitation). For the reasons stated below, we believe that the judgment lien is valid for twenty years and the collection statute should be extended accordingly.

FACTS

After reducing a tax lien to judgment, the United States receives an abstract of judgment to be filed in the appropriate county recorder's office. The abstract states that the judgment lien is effective for a period of 20 years and may be renewed by filing a notice of renewal. See 28 U.S.C. § 3201. However, under California law, judgment liens are effective for only 10 years but may be renewed by filing an application for renewal prior to the expiration of the 10 year period. These provisions seem to conflict with one another.

DISCUSSION

Generally, a tax lien arises in favor of the United States against all property or rights to property. I.R.C. § 6321. The lien arises on the date of assessment and continues until it is paid or the statute of limitation on collection expires. I.R.C. § 6322. The statute of limitation on collection is ten years from the date of assessment. I.R.C. § 6502. When an assessment is reduced to judgment, the collection period remains open until the liability is paid or becomes unenforceable. Id. Under federal law, a judgment lien is effective for 20 years, and may be renewed for one additional 20 year period by filing a notice of renewal in the same manner as the judgment. 28 U.S.C. § 3201(c). After the expiration of this 40 year period, the judgment lien is extinguished. Notwithstanding, the judgment itself remains enforceable at any time, as discussed below.

Under California law, judgments expire 10 years after the date of entry and any lien created by the judgment is extinguished. Cal. Civ. Proc. § 683.020. A judgment may be renewed if the judgment creditor files an application for renewal before the 10-year period of expiration set out in section 683.020. Cal. Civ. Proc. §§ 683.120, 683.130. The judgment lien is extended for 10 years from the date of filing the application for renewal if a certified copy of the application for renewal is timely recorded. Cal. Civ. Proc. § 683.180.

In order to understand the differences between the federal and California statutes of limitations, it is important to keep in mind that there are three different vehicles for collecting the tax. They are: (1) the judgment, (2) the judgment lien, and (3) the federal tax lien. When a tax assessment is reduced to judgment, the tax liens do not merge into the judgment nor do they merge into the judgment liens; they continue to exist independently of one another. I.R.C. § 6322; United States v. Overman, 424 F.2d 1142 (9th Cir. 1970); United States v. Hodes, 355 F.2d 746 (2nd Cir. 1966).

Each collection vehicle has a separate and independent life. The life of the tax lien is extended beyond the initial ten year period by virtue of the judgment. United States v. Weintraub, 613 F.2d 612 (6th Cir. 1979); Hector v. United States, 255 F.2d 84 (5th Cir. 1958); United States v. Ettelson, 159 F.2d 193 (7th Cir. 1947). The judgment also extends the enforceability of the liability and thus, the life of the tax lien. Even though the life of the tax lien is extended indefinitely by virtue of the judgment, the tax lien must be re-filed to maintain its priority under state law. See I.R.M. 5.17.4.8.2.3 and I.R.C. § 6323(g). In addition, a lien based on the judgment (the judgment lien) must be re-filed to maintain its priority under state law. The judgment itself, however, is not subject to limitation and is

enforceable at any time. United States v. Overman, 424 F.2d 1142 (9th Cir. 1970).

The question at issue here is whether the judgment lien must be re-filed after 20 years (as indicated on the face of the abstract of judgment) or every 10 years (as established by the California statute of limitation). Under federal law, a judgment lien is generally subject to state-created limitations. 28 U.S.C. § 1962; Fed. R. Civ. Proc. 69 (a). However, it specifically excludes judgments entered in favor of the United States. A state statute of limitation cannot run against the United States unless a federal statute permits. United States v. Summerlin, 310 U.S. 414 (1940); United States v. Overman, 424 F.2d 1142 (9th Cir. 1970). Since the federal statute specifically provides that judgments in favor of the United States are not subject to state-created limitations, federal law will apply. Under 28 U.S.C. § 3201(c)(1), a judgment lien is effective for 20 years. This lien may be renewed for one additional 20 year period by filing a notice of renewal with the appropriate district court. 28 U.S.C. § 3201(c)(2). Thus, it is the 20 year period that controls, and not the state-created 10 year period.

For purposes of updating the collection statute of limitation on IDRS, we recommend that you extend the CSED in 20 year increments from the date of entry of the judgment or application for renewal. This should allow the government to take the appropriate action for renewal prior to the expiration of the 20 year period. However, the purpose of doing this is to maintain the priority of the government's judgment lien. The judgment itself is not subject to limitation and is enforceable at any time. In addition, the life of the tax lien is extended indefinitely by virtue of the judgment. To maintain its priority, we must continue to refile it as well.

CONCLUSION

Based on the above, we believe that judgment liens must be renewed every twenty years, as indicated on the abstract of judgment. You should follow the procedures for updating IDRS that were set forth in Item A of your 4/18/02 email to us.

If you have any questions regarding this advice, please call Julie Fields at (408) 817-4669.

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